

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)

4)
5 MUR 7209)

6 Jose Peixoto for U.S. Congress)
7 and Luana Catarina Peixoto)
8 as treasurer)

DISMISSAL AND
CASE CLOSURE UNDER THE
ENFORCEMENT PRIORITY
SYSTEM

9
10 **GENERAL COUNSEL'S REPORT**

11 Under the Enforcement Priority System, the Commission uses formal scoring criteria as a
12 basis to allocate its resources and decide which matters to pursue. These criteria include, without
13 limitation, an assessment of the following factors: (1) the gravity of the alleged violation, taking into
14 account both the type of activity and the amount in violation; (2) the apparent impact the alleged
15 violation may have had on the electoral process; (3) the complexity of the legal issues raised in the
16 matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as
17 amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing
18 relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial
19 discretion to dismiss cases under certain circumstances. The Office of General Counsel has scored
20 MUR 7209 as a low-rated matter and has determined that it should not be referred to the Alternative
21 Dispute Resolution Office.¹

22 The Complaint alleges that Jose Peixoto for U.S. Congress and Luana Catarina Peixoto in her
23 official capacity as treasurer (the "Committee") violated the Act and Commission regulations by
24 failing to file disclosure reports after registering with the Commission as Jose Peixoto's authorized
25 committee on April 14, 2016.²

¹ The EPS rating information is as follows:
Feb. 7, 2017.

Complaint filed: Jan. 13, 2017; Response filed:

² Compl. at 1 (Jan. 13, 2017). Jose Peixoto registered as a candidate for U.S. Representative for Florida's 26th Congressional district the same day. See FEC Form 2, *Statement of Candidacy*, Jose Peixoto (Apr. 14, 2016) and FEC Form 1, *Statement of Organization*, Jose Peixoto for U.S. Congress (Apr. 14, 2016).

Peixoto acknowledges that the Committee filed no disclosure reports, but asserts that since its registration, the Committee never solicited or accepted contributions.³ Peixoto also asserts that the Committee made only one disbursement, a check to the Florida Division of Elections for a ballot access fee, and says that the check bounced.⁴ Peixoto explains that he could not deposit funds to make the check good because of a family emergency, and he believed that because he never paid the ballot fee, he was no longer a candidate.⁵ It appears that because Peixoto believed he was no longer a candidate, he also believed his Committee was not required to file reports with the Commission.⁶

A person becomes a candidate when, *inter alia*, he or she has received contributions or made expenditures aggregating in excess of \$5,000.⁷ Once a person crosses the \$5,000 candidacy threshold, he or she must file a Statement of Candidacy with the Commission within fifteen days, and must designate a principal campaign committee.⁸ The principal campaign committee must file a Statement of Organization within ten days of designation.⁹ The Act and the Commission's regulations require each treasurer of a political committee to file reports of receipts and disbursements.¹⁰ In any year where there is a regularly scheduled election for which a candidate is

³ Resp. at 2-3 (Feb. 7, 2017).

⁴ *Id.* Peixoto does not state the date the payment was made, or the amount of the check. However, Florida's ballot access fee for a 2016 Independent candidate for U.S. Representative was \$6,960, which should have been received by the Division of Elections no later than June 24, 2016. 2016 Federal Qualifying Handbook, Florida Division of Elections, p. 11, <http://dos.myflorida.com/media/695459/federal-qualifying-handbook.pdf> (Jan. 27, 2016).

⁵ Resp. at 3-4. Peixoto was on Florida's 2016 ballot and received 5.9% of the vote.

⁶ *Id.*

⁷ 52 U.S.C. § 30101(2)(A); 11 C.F.R. § 100.3(a)(1), (2). Ballot access fees count toward the \$5,000 expenditure threshold for candidate status under 52 U.S.C. § 30101(2). See Gen. Counsel's Rpt. at note 2, MUR 6513/Pre-MUR 517 (Cynthia Rodriguez Matthews); Gen. Counsel's Rpt. at 4, MURs 6374 and 6408 (Roly Arrojo for Congress); Gen. Counsel's Rpt. at 7-8, MUR 6315 (Alvin M. Greene); and Gen. Counsel's Rpt. at 2, MUR 7033 (Crane for Congress).

⁸ 52 U.S.C. § 30102(e)(1); 11 C.F.R. § 101.1(a).

⁹ 52 U.S.C. § 30103(a), (c).

¹⁰ 52 U.S.C. § 30104(a) and (b); 11 C.F.R. §§ 104.1, 104.3(a) and (b).

1 seeking election, the principal campaign committee of a candidate for the House of Representatives
2 shall file, *inter alia*, quarterly reports no later than the 15th day after the final day of a calendar
3 quarter.¹¹ The first report filed by a committee shall include all disbursements made prior to
4 becoming a political committee.¹²

5 Peixoto became a candidate when the Committee made a \$6,960 payment to the Florida
6 Division of Elections for ballot access.¹³ The payment of the ballot access fee also triggered
7 reporting requirements for the Committee, which should have filed a 2016 July Quarterly Report that
8 disclosed the payment, and the subsequent correction after the Committee's check bounced.¹⁴
9 Nevertheless, the Committee asserts that it made no disbursements other than the ballot access fee
10 and received no contributions. Therefore, given the small amount of activity, and in furtherance of
11 the Commission's priorities, relative to other matters pending on the Enforcement docket, the Office
12 of General Counsel recommends that the Commission exercise its prosecutorial discretion to dismiss
13 the allegation that Jose Peixoto for U.S. Congress and Luana Catarina Peixoto in her official capacity
14 as treasurer violated 52 U.S.C. § 30104(a) and (b).¹⁵ We also recommend that the Commission
15 remind the Committee to work with the Reports Analysis Division to begin filing its disclosure
16 reports or terminate.

¹¹ *Id.*

¹² 11 C.F.R. § 104.3(b)(2), (4).

¹³ *See* Note 7.

¹⁴ The Commission's Reports Analysis Division indicates that any payment is to be reported as a disbursement on the day it is made, and that upon learning of insufficient funds a committee would be expected to create a negative entry to correct the record. It is also possible that when the Committee check bounced, the Committee accrued debt that was not reported. We do not know if the Florida Division of Elections is attempting to collect the fee. *See* 11 C.F.R. § 104.3(d) (Disclosure reports filed with the Commission shall also disclose the amount and nature of outstanding debts and obligations).

¹⁵ *See Hecker v. Chaney*, 470 U.S. 821 (1985).

RECOMMENDATIONS

1. Dismiss the allegation that Jose Peixoto for U.S. Congress and Luana Catarina Peixoto in her official capacity as treasurer violated 52 U.S.C. § 30104(a) and (b);
2. Remind the Committee to file disclosure reports or terminate;
3. Approve the Factual and Legal Analysis;
4. Approve the appropriate letters; and
5. Close the file as to all Respondents.

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8.16.17

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Draft Reminder Letter